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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,316	01/26/2001	Dan Alan Brendes	1322/49/2	7530

25297 7590 03/21/2006

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EXAMINER

LE, HIEU C

ART UNIT PAPER NUMBER

2142

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/770,316

Applicant(s)

BRENDES ET AL.

Examiner

Hieu c. Le

Art Unit

2142

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 27 January 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

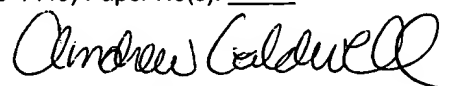
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: 3-8,45,46 and 50-54.  
Claim(s) rejected: 1-2,9-15,43-44,47-49,55.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



**ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: As to the argument that the declaration filed April 7, 2005 is not defective because it does present evidence of diligence, the argument has been considered but it is not persuasive. The declaration does not identify specific actions performed by the applicants during the relevant period that establish diligence. The declaration only contains an assertion that the applicants acted diligently. In other words, the declaration asserts a legal conclusion. A general assertion of diligence (i.e., a legal conclusion), amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). See, in re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974).

As to the supplemental declaration filed on January 27, 2006, it has not been considered because it was not seasonably presented. The applicants merely argue that the Office's holding of a prior declaration to be defective is itself good and sufficient reason for entry of a supplemental declaration after final. This argument is not persuasive. 37 CFR 1.131(b) clearly requires facts supporting conception and due diligence. The applicants knew or should have known the requirements of the rule. The applicants could have used the remaining time in their period for response to the non-final rejection to gather supporting facts and prepare a proper declaration. The applicants chose not to and filed a declaration that merely asserts diligence and provides no corroborating evidence.

Applicant alleges Glitho fails to teach or suggest detecting a network management event regarding operating status of an SS7 node residing in the SS7 network, and, in response to the event, generating a data network management message indicating the operating status of the SS7 node and sending that message to nodes in a data network that adapted to communicate with the SS7 network. The Examiner disagrees. Fourcand clearly discloses detecting a network management event regarding operation of an SS7 node, generating a data network management message that includes the SS7 point code status of the SS7 node; and sending the data network management message to specified nodes in the data network that are configured to communicate with the SS7 node (col. 4, lines 15-41 & col. 8, lines 1-65). Applicant alleges Glitho fails to teach or suggest the claimed invention claimed. The Examiner can not find anywhere in the claim language of "convey SS7 node operation status to the IP nodes"

Applicant alleges that Fourcand does not disclose detecting a network management event regarding operation of an SS7 node, generating a data network management message that includes SS7 point code status of the SS7 node, and sending the data network management message to specified nodes in the data network that are configured to communicate with the SS7 node. The Examiner disagrees. Fourcand clearly discloses that SS7 route management traffic management and all MTP (management transfer part) network management. Response mode functions (data network management message indicating status) where an immediate response is required to an incoming MPT network management message are performed (col. 7, lines 34-41). Col. 8, lines 2-13 further teaches the operation to all MPT routing function that provides access to signalling link status (network management event) reports internal errors and failures provides diagnostic capabilities SLCE 126 includes link management software to control the signalling links. Responses and status may be forwarded to management on SMCE (i.e. detecting a network management event regarding operating status).